Chapter 745

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Marine Insurance

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DEFINITIONS; LAWS APPLICABLE

745.005 Marine insurance and marine insurance company defined. (1) Whenever used in this chapter the terms "marine insurance," "marine business" and "marine risks" mean insurance or reinsurance against any and all kinds of loss of or damage to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind (excluding automobiles operating under their own power or while in storage not incidental to transportation), as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks, and all personal property floater risks including bailees' customers risks commonly known as bundle insurance;

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds or, except as specified in this subsection, insurance against loss by reason of bodily injury to the person); and

(c) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same is in course of transportation or otherwise.

(2) "Marine insurance company" means any persons, companies or associations authorized by this chapter to write marine insurance within the State of Oregon.

745.010 Marine insurance contract, marine adventure and maritime perils defined; law applicable to contract covering mixed sea and land risks. (1) A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure. Subject to the provisions of this chapter any lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular there is a marine adventure where:

(a) Any ship or other movables are exposed to maritime perils. Such property is in this chapter referred to as "insurable property."

(b) The earning or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loan or disbursements, is endangered by the exposure of insurable property to maritime perils.

(c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

(3) "Maritime perils" means the perils consequent on or incidental to the navigation of the sea; that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like, kind or which may be designated by the policy.

(4) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(5) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this chapter, in so far as applicable, shall apply thereto. Except as provided by subsections (4) and (5) of this section, nothing in this chapter shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined by this chapter.

745.015 Application of other insurance statutes; filing of statements. (1) Unless the context of any section of this chapter expressly indicates otherwise, the laws relating to the powers and duties of the State Insurance Commissioner, making of examinations, filing of financial and other statements, legal process, organization and

licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general shall, in so far as they are made applicable by the terms of such laws, or by the terms of this chapter, apply to all marine insurance companies transacting business within the state.

(2) With respect to the filing of statements, the commissioner shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office.

745.020 Application of common law and law merchant. The rules of the common law, including the law merchant, except where they are inconsistent with the express provisions of this chapter, apply to contracts of marine insurance.

745.025 Self-incrimination; immunity. (1) No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for a violation of any of the provisions of this chapter upon the ground or for the reason that the testimony or evidence required of him may tend to incriminate or degrade him.

(2) No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding or trial.

745.030 to 745.100 [Reserved for expansion]

INSURERS

745.105 Kinds of insurance authorized. An incorporated company may be licensed to make any or all insurance and reinsurance comprised in the following: On vessels, craft, aircraft and other similar vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in the process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same, or during any delays, storage, transshipment or reshipment, incident thereto, including builders' risks, war risks, and for loss of or damage to property, whether legal liability results therefrom or not, during, awaiting or arising out of navigation, transit, travel or transportation, or the construction or repair of vessels.

745.110 Corporations for reinsurance only. (1) Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the state in the same manner as prescribed for other companies.

(2) Such reinsurance companies may reinsure all classes of insurance specified in ORS 745.105.

(3) A reinsurance company organized or admitted to reinsure the enumerated classes of insurance must have an aggregate capital and surplus equal to one and one-half times the capital and surplus required by subsection (1) of ORS 745.120 for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as now required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact.

(4) A reinsurance company shall comply with all other sections of this chapter and with any other laws of the state regulating direct-writing companies, in so far as they are applicable.

745.115 Corporations engaged exclusively in foreign business. (1) Corporations engaged exclusively in the writing of marine insurance in foreign countries may be organized within the State of Oregon in the same manner and under the same conditions as prescribed by this chapter for companies writing risks within the state.

(2) The capital stock of such insurance corporations may be owned by domestic corporations engaged in marine insurance. The holding companies shall be given credit for the stock thus owned as admitted assets

when rendering their financial statements to the State Insurance Commissioner.

(3) Any corporation organized under this section shall pay taxes and fees as provided in the General Insurance Law and in this chapter and shall comply with and receive the benefit of all other sections of this chapter so far as the same may be applicable.

745.120 Capital and surplus requirements. (1) No stock company shall transact in this state the business of insurance referred to in ORS 745.105 unless it has a capital stock actually paid in, in cash or invested as provided by law, of at least $200,000 for the insurance specified in ORS 745.105, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least $100,000.

(2) An insurance company organized under laws other than the laws of this state and desiring to transact business in the state shall satisfy the State Insurance Commissioner:

(a) That it has, if a capital stock company, a paid-up capital and surplus of assets over its entire authorized capital and all other liabilities, invested in accordance with the laws of the state under which it is organized, at least equal to the capital and surplus required by subsection (1) of this section for the writing of marine insurance; or

(b) If a company without a capital stock, that it has a surplus of assets, invested according to the laws of the state under which it is organized, over all its liabilities, of $100,000; or

(c) If a company organized under a foreign government, province or state, that it has a surplus of assets, invested according to the laws of this state or of the state in the United States where it has its deposit, held in the United States in trust for the benefit and security of all policyholders in the United States, over all its liabilities in the United States of at least $300,000; and

(d) If writing more than one class of insurance as enumerated and allowed by ORS 745.105, that it has an additional $150,000 for each such additional kind of insurance written.

745.125 Effect of reinsuring risks on financial status and reserve requirements. (1) Any insurance or reinsurance company, authorized to transact insurance or reinsurance within the state may reinsure any part of an individual risk in another company having power to make such reinsurance. With the consent of the State Insurance Commissioner it may reinsure all its risks, within any class of insurance as enumerated in ORS 745.105, in another company.

(2) No credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the State Insurance Commissioner, or unless it is licensed in one or more states in the United States and shows the same standards of solvency as would be required if it were at the time of such reinsurance authorized in this state to insure risks of the same kind as those reinsured.

(3) If reinsurance is effected with an insurer so authorized or recognized for reinsurance in this state, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

(4) The commissioner shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct.

745.130 Computation of unearned premium liability; "surplus" defined. (1) With respect to marine insurance risks, the unearned premium is:

(a) Fifty percent of the amount of premiums received and receivable on unexpired risks on policies running one year or less from date of policy.

(b) One hundred percent of the amount of premiums on all unterminated voyage and transit risks.

(2) Voyage and transit risks shall be defined and deemed to expire as follows:

(a) Between ports or places on the continent of North America, and ports or places in the United Kingdom or on the continent of Europe, excluding Russia, 60 days.

(b) Between ports or places on the continent of North America and ports or places

on the continent of North America, 60 days.

(c) Between ports or places on the continent of North America and ports or places in the Hawaiian Islands, 60 days.

(d) Between all other ports or places, 90 days.

(3) Every insurance company shall so compute its unearned premiums in its annual and other financial statements. All funds of the company in excess of such unearned premium reserve and all outstanding losses and the capital stock shall be regarded under this chapter as constituting surplus.

745.135 Authorized investments of funds in excess of required minimum capital. (1) The capital of a domestic insurance corporation in excess of its required minimum capital and the surplus money and funds over and above its capital and any deposit that it may be required to make with the State Insurance Commissioner may be invested in the stocks, bonds or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States or of any state thereof.

(2) The residue of the assets of every domestic mutual insurance corporation transacting marine insurance in the state over and above the minimum capital required of stock companies may be similarly invested.

(3) A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws there in the same kinds of securities in such foreign country as such company is allowed by law to invest in in the United States.

(4) Nothing in this chapter prohibits a company from accepting in good faith, to protect its interests, any securities or property in payment of or to secure debts due or to become due the company.

745.140 Record of transactions. (1) Every insurance company organized or admitted to write marine insurance in the state shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to:

(a) Registered mail insurance.

(b) Hull and time freight insurance.

(c) Cargo and voyage freight insurance and other voyage interests.

(d) Builders' risk insurance.

(e) Marine insurance applicable to foreign trade as distinguished from that applying to American coastwise and inland waters.

(f) Reinsurance ceded to American companies.

(g) Reinsurance ceded to American branch offices of alien admitted companies.

(h) Reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers.

(i) Reinsurance received from American companies.

(j) Reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers.

(2) The data as herein outlined shall be furnished to the State Insurance Commissioner within two months following his request therefor and upon a form furnished by him.

(3) Such classified records of any individual company reporting are intended solely for the information of the state and shall not be revealed to any person not authorized by law to receive the same.

(4) No person or persons in position to acquire the aforesaid information shall, either while in office or after leaving office, reveal such information to a competitor.

(5) Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the state $200 per month for each month it has failed.

745.145 Taxation of foreign and alien companies. (1) Except as provided in this section, an alien or foreign insurance company transacting a marine insurance business in this state shall pay the same rate of tax on premium income as that paid by other foreign and alien companies under ORS 736.225.

(2) Marine insurance written within the state upon hulls, freights or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from, importation into any country, or transportation coastwise, intercoastal or navigable inland waters, including risks or perils of transportation by land or water from point of origin to final destination in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, and while awaiting shipment, and during any delays,

storage, transshipment, or reshipment incident thereto while in transit, including war risks and marine builder's risks, shall be taxed only on that proportion of the total underwriting profit of such insurer from such insurance written within the United States that the gross premiums of the insurer from such insurance written within this state bear to the gross premiums of such insurer from such insurance written within the United States.

(3) The "underwriting profit," for purposes of this section, is arrived at by deducting from the net earned premiums on such marine insurance contracts written within the United States during the calendar year:

(a) The losses incurred, and

(b) Expenses incurred, including all taxes, state and federal, in connection with such net earned premiums.

(4) The amount of "net earned premiums" on such marine insurance contracts written during the calendar year is the sum of paragraphs (a) and (b) less paragraph (c) of this subsection.

(a) Gross premiums on such marine insurance contracts, written during the calendar year, less any and all return premiums, any and all premiums on policies not taken and any and all premiums paid for such reinsurance.

(b) Unearned premiums on such outstanding marine business at the end of the preceding calendar year.

(c) Unearned premiums on such outstanding marine business at the end of the current calendar year.

(5) "Losses incurred," as used in this section, means gross losses incurred during the calendar year under such marine contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collectible from any source applicable to the aforesaid losses.

(6) "Expenses incurred" includes:

(a) Specific expenses incurred on such earned marine premiums, consisting of all commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically in connection with such premiums, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

(b) General expenses incurred on such earned premiums, consisting of that proportion of general or overhead expenses, such as salaries of officers and employes, printing and stationery, all taxes of this state and of the United States, except as otherwise provided herein, and all other expenses not chargeable specifically to a particular class of insurance, which the net premiums of such marine insurance written bear to the total net premiums written by such insurer from all classes of insurance written by it during the current calendar year. However, in arriving at the "underwriting profit" for purposes of taxation under this section there shall not be deducted in respect to expenses incurred, as hereinbefore defined and specified in paragraphs (a) and (b) of this subsection, amounts which, in the aggregate, exceed 40 percent of the gross premiums on such marine insurance contracts.

745.150 Computation of tax. (1) Each insurer transacting marine insurance in this state shall file annually on or before March 1 with the State Insurance Commissioner and in the form prescribed by him, a report of all the items pertaining to its insurance business as enumerated and prescribed in ORS 745.145.

(2) To determine the basis of the tax on underwriting profit, each insurer that has been writing such marine insurance in this state for three years shall furnish the commissioner a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding three calendar years. An insurer that has not been writing such marine insurance for three years shall furnish to the commissioner a statement of all the aforementioned items for each of the calendar years during which it has written such marine insurance.

(3) If the commissioner finds the report of the insurer reporting correct, he shall, if the insurer has transacted such marine insurance for three years:

(a) Ascertain the average annual underwriting profit, as provided in ORS 745.145, derived by the insurer from such marine insurance business written within the United States during the last preceding three calendar years.

(b) Ascertain the proportion which the average annual premiums of the insurer from such marine insurance written by it in this state during the last preceding three calendar years bears to the average total of

such marine premiums of the insurer during the same three years.

(c) Charge five percent on this proportion of the average annual underwriting profit of the insurer from such marine insurance to the insurer as a tax upon such marine insurance written by it in this state during the current calendar year.

(4) The commissioner shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such insurer from such marine insurance during the preceding three years, including the current calendar year. At the expiration of each current calendar year, the profit or loss on such marine insurance business of that year is to be added or deducted, and the profit or loss upon such marine insurance business of the first calendar year of the preceding three-year period is to be dropped so that the computation of underwriting profit for purposes of taxation under this section will always be on a three-year average.

(5) An insurer that has not been writing such marine insurance in this state for three years shall, until it has transacted such business in this state for that number of years, be taxed on the basis of its annual underwriting profit on such marine insurance written within the United States for the current calendar year, subject, however, to an adjustment in the tax as soon as the commissioner, in accordance with the provisions of this section, is enabled to compute the tax on the three-year basis.

(6) In the case of mutual companies the commissioner shall not include in the underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

(7) When the commissioner has computed the tax on an insurer's underwriting profit he shall forthwith mail to the last known address of the principal office of such insurer a statement of the amount so charged against it, which amount the insurer shall pay to the commissioner within 30 days after receipt of such notice.

(8) If a company ceases to do a marine insurance business in the state, it shall thereupon make report to the commissioner of the items pertaining to its marine insurance business, as enumerated and described in this section, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the commissioner the taxes computed according to this section and the annual license fees thereon.

745.155 Penalty for failure to file report or pay tax. (1) If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by this chapter, it shall be liable to the state for the amount thereof and a penalty of not more than $200 per month for each month it has failed after demand therefor.

(2) Service of process in any action to recover such tax or penalty shall be made according to the requirements of the law relating to actions brought against insurance companies by policyholders thereof.

745.160 Concerted action authorized; risk sharing associations. (1) Any company organized or admitted to write marine insurance within the state may become a party to any corporation, association, exchange or bureau organized for concerted action with respect to any one or more of the following purposes:

(a) The supervision or performance of a maintenance, inspection and loss survey service.

(b) The supervision or conduct of salvage operations.

(c) The formulation, adoption or enforcement of policy forms and conditions.

(d) The application of correct and just principles.

(e) The formulation and enforcement of uniform, efficient and economical practices.

(f) The recommendation, approval or making of rates of premium.

(g) The safeguarding and legitimate advancement of the business in the interest of members.

(2) Any company organized or admitted to write marine insurance or reinsurance within the state may become a party to any association, syndicate, exchange or bureau whose membership consists of companies or associations authorized to write marine insurance or reinsurance under the laws of the United States or of any state, territory, district or possession thereof, and which is organized to transact a marine insurance and reinsurance business in the United States or in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

745.165 to 745.200 [Reserved for expansion]

INSURABLE INTEREST

745.205 Insurable interest required. (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract:

(a) Where the assured has no insurable interest as defined by this chapter, and the contract is entered into with no expectation of acquiring such an interest; or

(b) Where the policy is made "interest or no interest" or "without further proof of interest than the policy itself" or "without benefit of salvage to the insurer" or subject to any other like term; provided, that where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

745.210 When interest must exist. (1) The assured must be interested in the subject matter insured at the time of the loss though he need not be interested when the insurance is effected.

(2) Where the subject matter is insured "lost or not lost," the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not.

(3) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

745.215 General definition of insurable interest. Subject to the provisions of this chapter, every person has an insurable interest who is interested in a marine adventure. In particular, a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

745.220 Specific insurable interests. (1) A defeasible interest is insurable, as also is a contingent interest. In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

(2) A partial interest of any nature is insurable.

(3) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it. Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

(4) The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

(5) The master or any member of the crew of a ship has an insurable interest in respect of his wages.

(6) In the case of advance freight, the person advancing the freight has an insurable interest in so far as such freight is not repayable in case of loss.

(7) The assured has an insurable interest in the charges of any insurance which he may effect.

745.225 Measure of insurable value. Subject to any express provision or valuation in the policy, the insurable value of the subject matter insured must be ascertained as follows:

(1) In insurance on ship, the insurable value is the value at the commencement of the risk of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages and other disbursements, if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.

(4) In insurance on any other subject matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

745.230 Quantum of interest; person partly interested may insure for benefit of others. (1) Where the subject matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee or other person having an interest in the subject matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

745.235 to 745.300 [Reserved for expansion]

POLICIES; CONSTRUCTION; ASSIGNMENT

745.305 Valued and unvalued policies. (1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject matter insured.

(a) Subject to the provisions of this chapter, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured whether the loss is total or partial.

(b) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

(3) An unvalued policy is a policy which does not specify the value of the subject matter insured but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner specified in ORS 745.225.

745.310 Floating policy by ship or ships. (1) A floating policy is a policy which describes the insurance in general terms and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by indorsement on the policy or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated. An omission or erroneous declaration, if made in good faith, may be rectified even after loss or arrival.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject matter of that declaration.

745.315 Voyage and time policies. (1) Where the contract is to insure the subject matter at and from, or from one place to another or others, the policy is called a "voyage policy."

(2) Where the contract is to insure the subject matter for a definite period of time the policy is called a "time policy."

(3) A contract for both voyage and time may be included in the same policy.

745.320 Contract must be embodied in policy. Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this chapter. The policy may be executed and issued either at the time the contract is concluded or afterward.

745.325 What policy must specify. A marine policy must specify:

(1) The name of the assured or of some person who effects the insurance on his behalf.

(2) The subject matter insured and the risk insured against.

(3) The voyage, or period of time, or both, as the case may be, covered by the insurance.

(4) The sum or sums insured.

(5) The name or names of the insurers.

745.330 Signature of insurer. (1) A marine policy must be signed by or on behalf of the insurer, except that in the case of a corporation the corporate seal is sufficient. Nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured.

745.335 Designation of subject matter. (1) The subject matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject matter insured need not be specified in the policy.

(3) Where the policy designates the subject matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject matter insured.

745.340 When contract deemed concluded. (1) A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not.

(2) For the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, although it is not signed.

745.345 Premium to be arranged. (1) Where a marine insurance is effected at a premium to be arranged and no arrangement is made, a reasonable premium is payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event and that event happens but no arrangement is made, then a reasonable additional premium is payable.

745.350 When and how policy is assignable. (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name. The defendant in such case is entitled to make any defense arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by indorsement thereon or in other customary manner.

745.355 Assignment of interest in property insured. Where the assured assigns or otherwise parts with his interest in the subject matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance unless there is an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect a transmission of interest by operation of law.

745.360 to 745.400 [Reserved for expansion]

MATTERS AVOIDING CONTRACT OR AFFECTING ATTACHING OF RISK

745.405 Representations. (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract and before the contract is concluded must be true. If it is untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk. Whether a particular representation is material is in each case a question of fact.

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

(a) A representation as to a matter of fact is true if it is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(b) A representation as to a matter of expectation or belief is true if it is made in good faith.

(4) A representation may be withdrawn or corrected before the contract is concluded.

745.410 Nondisclosures. (1) Subject to the provisions of this section, the assured must disclose to the insurer before the contract is concluded every material circumstance which is known to the assured. The assured is deemed to know every circumstance which in the ordinary course of business ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. Whether any particular circumstance which

is not disclosed is material is in each case a question of fact.

(3) The term "circumstance" includes any communication made to, or information received by, the assured.

(4) In the absence of inquiry the following circumstances need not be disclosed:

(a) Any circumstance which diminishes the risk.

(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of his business, as such, ought to know.

(c) Any circumstance as to which information is waived by the insurer.

(d) Any circumstance which is superfluous to disclose by reason of any express or implied warranty.

745.415 Nondisclosure by agent. Subject to the provisions of ORS 745.410 as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent the agent must disclose to the insurer:

(1) Every material circumstance which is known to himself. An agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by him or to have been communicated to him.

(2) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

745.420 Implied condition as to commencement of risk. (1) Where the subject matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time and that if the adventure is not so commenced the insurer may avoid the contract.

(2) This implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded or by showing that he waived the condition.

745.425 Alteration of port of departure. If the place of departure is specified in a policy of marine insurance and the ship instead of sailing from that place sails from any other place, the risk does not attach.

745.430 Sailing for different destination. If the destination is specified in a policy of marine insurance and the ship instead of sailing for that destination sails for any other destination, the risk does not attach.

745.435 Change of voyage. (1) If after the commencement of the risk the destination of the ship is voluntarily changed from the destination contemplated by a policy of marine insurance, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, if there is a change of voyage the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested. It is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

745.440 Deviation from voyage. (1) If a ship, without lawful excuse, deviates from the voyage contemplated by a policy of marine insurance, the insurer is discharged from liability as from the time of deviation. It is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy:

(a) If the course of the voyage is specifically designated by the policy and that course is departed from; or

(b) If the course of the voyage is not specifically designated by the policy but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

745.445 Improper order of touching several ports of discharge may constitute deviation. (1) If several ports of discharge are specified in a policy of marine insurance, the ship may proceed to all or any of them, but in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.

(2) If the policy is to "ports of discharge," within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as

she goes to, in their geographical order. If she does not there is a deviation.

745.450 Effect of transshipment. If, by a peril insured against by a policy of marine insurance, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables or transshipping them and sending them on to their destination, the liability of the insurer continues notwithstanding the landing or transshipment.

745.455 Delay in voyage. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

745.460 Excuses for deviation or delay. (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused:

(a) Where authorized by any special term in the policy; or

(b) Where caused by circumstances beyond the control of the master and his employer; or

(c) Where reasonably necessary in order to comply with an express or implied warranty; or

(d) Where reasonably necessary for the safety of the ship or subject matter insured; or

(e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) Where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable dispatch.

745.465 to 745.500 [Reserved for expansion]

LOSSES; ABANDONMENT; SUBROGATION

745.505 Included and excluded losses; excepted causes. (1) Subject to the provisions of this chapter and unless the policy otherwise provides, the insurer in a policy of marine insurance is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular:

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew.

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against.

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

745.510 Partial and total loss. (1) A loss under a policy of marine insurance may be either total or partial. Any loss other than a total loss, as defined in ORS 745.510 to 745.520, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

(4) If the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

745.515 Actual total loss. (1) If the subject matter insured by a policy of marine insurance is destroyed or so damaged as to

cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) If the ship concerned in the adventure is missing and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

745.520 Constructive total loss. (1) Subject to any express provision in the policy, there is a constructive total loss where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss:

(a) If the assured is deprived of the possession of his ship or goods by a peril insured against and either it is unlikely that he can recover the ship or goods, or, the cost of recovering the ship or goods would exceed their value when recovered; or

(b) If a ship is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(c) In case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

(3) If there is a constructive total loss the assured may either treat the loss as a partial loss or abandon the subject matter insured to the insurer and treat the loss as if it were an actual total loss.

745.525 Notice of abandonment. (1) Subject to the provisions of this section, if the assured elects to abandon the subject matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) If notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

(6) If notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) In the case of an actual total loss no notice of abandonment need be given.

(8) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(9) Notice of abandonment may be waived by the insurer.

(10) If an insurer has reinsured his risk, no notice of abandonment need be given by him.

745.530 Effect of abandonment. (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject matter insured and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned and which is earned by her subsequent to the casualty causing the loss, less the expense of earning it incurred after the casualty. Where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

745.535 General average loss. (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expend-

iture is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to conditions imposed by maritime law, to a ratable contribution from the other parties interested. Such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against.

(7) Where ship, freight and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contribution is to be determined as if those subjects were owned by different persons.

745.540 Particular average loss. (1) A particular average loss is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

745.545 Salvage charges. (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by these perils.

(2) "Salvage charges" means the charges recoverable under the maritime law by a salver independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

745.550 Subrogation. (1) If the insurer pays for a total loss of the subject matter insured, either of the whole, or in the case of goods of any apportionable part, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject matter so paid for and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss he acquires no title to the subject matter insured or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this chapter, by such payment for the loss.

745.555 Contribution. (1) If the assured is overinsured by double insurance, each insurer is bound as between himself and the other insurers to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss he may maintain an action for contribution against the other insurers and is entitled to the same remedies as a surety who has paid more than his proportion of the debt.

745.560 Effect of underinsurance. If the assured is insured for an amount less than the insurable value or, in case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

745.565 to 745.985 [Reserved for expansion]

PENALTIES

745.990 Penalties. (1) Violation of subsection (4) of ORS 745.140 is punishable,

upon conviction, by a fine of $2,000 or imprisonment in the county jail for one year, or both.

(2) Failure or refusal of performance or observance of any stipulated duty imposed by this chapter, excluding ORS 745.145 and 745.150, is punishable by a fine not exceeding $100.